

CHAPTER 6 EXECUTIVE BRANCH ETHICS

DIVISION I GENERAL PROVISIONS

351—6.1(68B) Scope of chapter. Pursuant to Iowa Code section 68B.32(1), the Iowa ethics and campaign disclosure board is to set standards for, investigate complaints relating to, and monitor the ethics of officials, employees, and candidates for office in the executive branch of state government. Pursuant to Iowa Code Supplement section 68B.32A(12), the board is required to establish rules relating to ethical conduct for the executive branch of state government. This chapter sets the standards and establishes the rules for the ethical conduct of persons in the executive branch of state government.

This rule is intended to implement Iowa Code section 68B.32(1) and Iowa Code Supplement section 68B.32A(12).

351—6.2(68B) Definitions. For purposes of this chapter, the following definitions apply:

“*Agency of state government*” or “*state agency*” means any authority, board, bureau, commission, community college, department, division, office of a statewide elected official, or regents university.

“*Board*” means the Iowa ethics and campaign disclosure board.

“*Candidate for statewide office*” means a candidate for governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, or attorney general.

“*Employee*” means an individual who is a paid employee of any agency of state government. “Employee” does not include an official or an independent contractor.

“*Executive branch of state government*” means an agency of state government.

“*Official*” means a statewide elected official, an executive or administrative head or heads of a state agency, a deputy executive or administrative head or heads of a state agency, a member of a board or commission as defined under Iowa Code section 7E.4, or a head of a major subunit of a state agency whose position involves a substantial exercise of administrative discretion or the expenditure of public funds.

“*State duties*” means the official duties, responsibilities, or activities of an official or employee that are mandated by law, rule, or court order, or that otherwise lawfully aid an agency of state government in carrying out the statutory functions of the agency.

This rule is intended to implement Iowa Code Supplement section 68B.2.

351—6.3(68B) Complaints or filing information alleging a violation.

6.3(1) Who may file. Any person may file a complaint or provide information to the board alleging a violation of Iowa Code Supplement chapter 68B or this chapter by officials, employees, and candidates for statewide office.

6.3(2) Procedure. The procedure for filing a complaint or providing information to the board alleging a violation of Iowa Code Supplement chapter 68B or this chapter is set out in Iowa Code section 68B.32B and 351—Chapter 9.

6.3(3) Whistleblower protection. A person who discharges or discriminates against an official or employee because the official or employee filed a complaint or provided information to the board shall be subject to the board's complaint process if the official or employee filed the complaint or provided the information in good faith. If it is determined after a contested case proceeding that a person has impermissibly discharged or discriminated against an official or employee, the board may impose sanctions as set out in Iowa Code section 68B.32D.

For purposes of this subrule, "good faith" means that any statements or materials in a complaint or included as part of information provided to the board were made or provided with a reasonable belief that such statements or materials were true and accurate.

This rule is intended to implement Iowa Code Supplement section 68B.32A(13) and Iowa Code section 68B.32B.

351—6.4(68B) Board advice. Persons subject to the authority of the board under Iowa Code Supplement chapter 68B or this chapter may seek advice or guidance from the board concerning the legality of any action or conduct potentially affected by Iowa Code Supplement chapter 68B or this chapter.

6.4(1) Advisory opinion. A board advisory opinion applies a statute or rule under the board's jurisdiction to a particular factual situation. The procedure for requesting a board opinion is set out in rules 351—1.2(68B) and 351—1.3(68B). Pursuant to Iowa Code Supplement section 68B.32A(11) as amended by 2004 Iowa Acts, Senate File 2179, section 10, a board opinion, if followed, constitutes a defense to a subsequent complaint or information provided to the board concerning the same facts and circumstances.

6.4(2) Declaratory order. Persons may also seek board guidance concerning the application of a statute or rule under the board's jurisdiction to a specific factual situation through the petition for declaratory order procedure set out in 351—Chapter 12.

6.4(3) Routine administrative advice. A person may also receive oral or written routine administrative advice from board staff concerning the application of Iowa Code chapter 68B or this chapter. Routine administrative advice is not binding on the board, but may be offered as a defense to a subsequent complaint or information provided to the board concerning the same facts and circumstances.

This rule is intended to implement Iowa Code Supplement section 68B.32A(11) as amended by 2004 Iowa Acts, Senate File 2179, section 10.

DIVISION II CONFLICT OF INTEREST AND MISUSE OF PROPERTY

351—6.5 to 6.7 Reserved.

351—6.8(68B) Misuse of public property. Iowa Code section 68B.32A(12) directs the board to establish rules relating to the misuse of public property by officials, employees, and candidates for statewide office.

6.8(1) Definition of public property. "Public property" means any real or personal property owned or controlled by the state of Iowa including but not limited to buildings, facilities, equipment, supplies, funds, records, files, and materials.

6.8(2) Prohibited uses. The following are deemed to be the misuse of public property by an official, employee, or candidate for statewide office:

a. Using public property to engage in an outside employment or activity that leads to an unacceptable conflict of interest as prohibited in Iowa Code section 68B.2A(1) "a."

b. Using public property to knowingly and purposefully send, receive, or view obscene material. “Obscene material” means any material depicting or describing the genitals, sex acts, masturbation, excretory functions, or sadomasochistic abuse which the average person, taking the material as a whole and applying contemporary community standards with respect to what is suitable material, would find appeals to the prurient interest and is patently offensive; and the material, taken as a whole, lacks serious literary, scientific, political, or artistic value.

This paragraph shall not apply to obscene materials that are sent or received as part of a law enforcement investigation or are authorized by law to be sent or received.

c. Using public property for personal financial gain. This prohibition does not apply to the receipt of lawful compensation for the performance of official state duties.

d. Using public property for a personal benefit to the detriment of the state.

e. Removing public property from a state building or facility for personal use.

f. Using public property to engage in political activities as prohibited in 351—Chapter 5.

This rule is intended to implement Iowa Code section 68B.32A(12).

351—6.9(68B) Use of confidential information. No official or employee shall disclose or use confidential information, including the contents of a sealed bid acquired during the course of the official’s or employee’s state duties, for the personal gain or benefit of any person. This rule does not apply to the release of information that is mandated by law, rule, or court order.

This rule is intended to implement Iowa Code Supplement section 68B.32A(12).

DIVISION III
SALES OF GOODS OR SERVICES

351—6.10(68B) Prohibition on sales; when public bids required—disclosure of income. Pursuant to Iowa Code section 68B.3, an official or employee shall not sell, in any one occurrence, goods or services having a value in excess of \$2,000 to a state agency unless the sale is made pursuant to an award or contract let after public notice and competitive bidding.

6.10(1) Exceptions. The prohibition in Iowa Code section 68B.3 and this rule shall not apply to any of the following:

a. Sales of goods or services done as part of the official’s or employee’s state duties.

b. Sales of services to a state agency when the official or employee does not serve the agency or is not employed by that agency.

c. Sales of services to a state agency with which the official or employee does not have substantial and regular contact as part of the official’s or employee’s state duties.

d. The publication of resolutions, advertisements, or other legal propositions or notices in newspapers designated by law for the publication of such materials and for which publication rates are fixed by law.

e. Instruction at an accredited educational institution if the official or employee meets the minimum education and licensing requirements established for other instructors at the educational institution.

6.10(2) Sales to political subdivisions. An official who sells goods or services to a political subdivision of the state shall disclose on the official’s Form PFD as provided in 351—Chapter 7 if income was received from the sale.

This rule is intended to implement Iowa Code section 68B.3.

351—6.11(68B) Sales by regulatory agency officials or employees. An official or employee of a regulatory agency shall not directly or indirectly sell any goods or services to individuals, associations, or corporations subject to the regulatory authority of the official's or employee's agency except as provided by Iowa Code Supplement section 68B.4 and this rule. This prohibition does not apply to sales that are part of the official's or employee's state duties.

6.11(1) Applicability. Pursuant to Iowa Code Supplement section 68B.4, the board shall adopt rules specifying the method by which an official or employee of a regulatory agency may obtain consent to sell a good or service to an individual, association, or corporation subject to the regulatory authority of the official's or employee's agency. This rule sets out the method of obtaining consent by a regulatory agency official or employee.

6.11(2) Definitions. For purposes of this rule, the following definitions apply:

"Agency" means a regulatory agency.

"Employee" means an employee of an executive branch regulatory agency and does not include an independent contractor or an official.

"Official" means a statewide elected official of a regulatory agency, an executive or administrative head or heads of a regulatory agency, a deputy executive or administrative head or heads of a regulatory agency, a member of a board or commission as defined under Iowa Code section 7E.4, or a head of a major subunit of a regulatory agency whose position involves a substantial exercise of administrative discretion or the expenditure of public funds.

"Regulatory agency" means the department of agriculture and land stewardship, department of workforce development, department of commerce, Iowa department of public health, department of public safety, department of education, state board of regents, department of human services, department of revenue, department of inspections and appeals, department of administrative services, public employment relations board, state department of transportation, civil rights commission, department of public defense, Iowa ethics and campaign disclosure board, and department of natural resources.

6.11(3) Request for consent. An official's or employee's request for an agency's consent to the sale of goods or services shall comply with all of the following:

a. The request shall be in writing and shall be filed with the official's or employee's agency at least 20 calendar days in advance of the proposed sale of any goods or services.

b. The request shall include all of the following:

(1) The name of the individual, association, or corporation to which the goods or services are to be sold;

(2) The relationship of the individual, association, or corporation to the agency;

(3) A description of the goods or services;

(4) The date or dates that the goods or services will be delivered; and

(5) A statement by the official or employee explaining how the proposed sale of the goods or services will not violate the provisions of Iowa Code Supplement section 68B.4 or create a conflict of interest under Iowa Code section 68B.2A.

6.11(4) Agency guidelines. Iowa Code Supplement section 68B.4 and the guidelines in this subrule shall be the sole legal authorities to be used by an agency in considering the granting of consent. In determining whether to grant consent, the agency shall take the following guidelines into consideration:

a. The official or employee is not the person with the authority to determine whether consent should be granted.

b. The duties and functions performed by the official or employee seeking consent are not related to the regulatory authority of the agency over the individual, association, or corporation to which the goods or services will be sold.

c. The selling of the goods or services does not affect the official's or employee's duties or functions at the agency.

d. The selling of the goods or services will not cause the official or employee to advocate on behalf of the individual, association, or corporation to the agency.

e. The selling of the goods or services does not cause the official or employee to sell goods or services to the agency on behalf of the individual, association, or corporation.

f. The selling of the goods or services will not result in a conflict of interest as provided in Iowa Code section 68B.2A.

g. The request complies with the procedural requirements of subrule 6.11(3).

These guidelines shall be publicized and made known to all personnel throughout the agency.

6.11(5) *Agency decision.* The official's or employee's agency shall issue a written consent or denial within 14 calendar days following the date the request was filed. The deadline may be extended by agreement of both the official or employee and the agency. If the request is denied or granted conditionally, the agency shall state the reasons for the denial or conditional consent.

6.11(6) *Appeal of denial.* An official or employee who receives a denial or conditional consent may file a request with the board for a contested case proceeding pursuant to 351—Chapter 11 for a determination of whether the situation described in the request complies with the requirements of Iowa Code section 68B.2A, Iowa Code Supplement section 68B.4 and this rule. The final order of the board constitutes final agency action for purposes of seeking judicial review.

6.11(7) *Copy of consent filed with board.* Pursuant to Iowa Code Supplement section 68B.4, an agency granting consent shall file a copy of the consent with the board within 20 days of consent being granted. The board shall treat the consent as a public record. The failure to provide a copy of the consent may result in the imposition of board sanctions against the individual who granted the consent.

6.11(8) *Consent not a defense.* Consent granted by an agency under this rule shall not constitute a defense to a complaint alleging a violation of any law or rule. It is the responsibility of the official or employee to ensure compliance with all applicable laws and rules.

This rule is intended to implement Iowa Code Supplement section 68B.4.

351—6.12(68B) Sales by members of the office of the governor. A permanent full-time member of the office of the governor shall not directly or indirectly sell any goods or services to registered lobbyists before the general assembly or the executive branch or to individuals, associations, or corporations that employ persons who are registered lobbyists before the general assembly or the executive branch except as provided in Iowa Code section 68B.4B as amended by 2005 Iowa Acts, House File 253, section 4, and this rule. This prohibition does not apply to sales that are part of the member's state duties.

6.12(1) *Request for consent.* A request submitted by a member of the office of the governor for consent to sell goods or services shall comply with all of the following:

a. The request shall be in writing and shall be filed at least 20 calendar days in advance of the proposed sale of any goods or services with the person responsible for hiring or approving the hiring of the member.

b. The request shall include all of the following:

(1) The name of the lobbyist, individual, association, or corporation to which the goods or services are to be sold;

(2) The relationship of the lobbyist, individual, association, or corporation to the office of the governor;

(3) A description of the goods or services;

(4) The date or dates that the goods or services will be delivered; and

(5) A statement by the member explaining how the proposed sale of the goods or services will not violate the provisions of Iowa Code section 68B.4B as amended by 2005 Iowa Acts, House File 253, section 4, or create a conflict of interest under Iowa Code section 68B.2A.

6.12(2) Guidelines for granting consent. In determining whether to grant consent, the person responsible for hiring or approving the hiring of the member shall take the following guidelines into consideration:

- a. The duties and functions performed by the member are not related to the authority of the office of the governor over the lobbyist, individual, association, or corporation.
- b. The selling of goods or services by the member to the lobbyist, individual, association, or corporation does not affect the member's duties or functions at the office of the governor.
- c. The selling of any goods or services by the member to a lobbyist, individual, association, or corporation does not include lobbying the office of the governor.
- d. The selling of any goods or services by the member does not cause the member to sell goods or services to the office of the governor on behalf of the lobbyist, individual, association, or corporation.
- e. The selling of the goods or services will not result in a conflict of interest as provided in Iowa Code section 68B.2A.
- f. The request complies with the procedural requirements of subrule 6.12(1).

These guidelines shall be publicized and made known to members of the office of the governor.

6.12(3) Decision. The person responsible for hiring or approving the hiring of the member shall issue a written consent or denial within 14 calendar days following the date the request was filed. The deadline may be extended by agreement of both the member and the person. If the request is denied, the person shall state the reasons for the denial.

6.12(4) Appeal of denial. A member who receives a denial may file a request with the board for a contested case proceeding pursuant to 351—Chapter 11 for a determination of whether the situation described in the request complies with the requirements of Iowa Code section 68B.2A, Iowa Code section 68B.4B as amended by 2005 Iowa Acts, House File 253, section 4, and this rule. The final order of the board constitutes final agency action for purposes of seeking judicial review.

6.12(5) Copy of consent filed with board. Pursuant to Iowa Code section 68B.4B as amended by 2005 Iowa Acts, House File 253, section 4, a copy of consent granted to a member shall be filed with the board within 20 days of the granting of consent. The board shall treat the consent as a public record. The failure to provide a copy of the consent may result in the imposition of board sanctions against the person who granted the consent.

6.12(6) Consent not a defense. Consent granted under this rule shall not constitute a defense to a complaint alleging a violation of any law or rule. It is the responsibility of the member of the office of the governor to ensure compliance with all applicable laws and rules.

This rule is intended to implement Iowa Code section 68B.4B as amended by 2005 Iowa Acts, House File 253, section 4.

DIVISION IV EMPLOYMENT RESTRICTIONS

351—6.13 Reserved.

351—6.14(68B) Engaging in services against the interest of the state prohibited. Except for a member of a board or commission, no official or employee shall receive compensation in any form, or enter into any type of agreement to receive compensation in any form, to appear on behalf of any person or otherwise render services against the interest of the state except as set out in Iowa Code section 68B.6 as amended by 2004 Iowa Acts, Senate File 2179, section 8, and this rule. This prohibition relates to any case, proceeding, application, or other matter before any federal court, federal bureau, federal agency, federal commission, federal department, any agency of state government, or any court of the state of Iowa.

6.14(1) Definitions. For purposes of this rule, the following definitions apply:

“*Board*” means a policy-making body that has the power to hear contested cases or a policy-making body that has powers for both rule making and hearing contested cases.

“*Commission*” means a policy-making body that has rule-making powers.

6.14(2) Member of board or commission. No member of a board or commission shall receive compensation in any form, or enter into any type of agreement to receive compensation in any form, to appear on behalf of any person or otherwise render services against the interest of the state in relation to any case, proceeding, application, or other matter before the subunit of a state agency in which the member serves or is employed, or with which the member has substantial and regular contact as part of the member’s state duties.

6.14(3) Exception for attorney general and public defender. As provided in 2004 Iowa Acts, Senate File 2179, sections 1 and 2, officials and employees carrying out the official duties of the office of the attorney general or the office of the state public defender are not subject to the provisions of Iowa Code section 68B.6 as amended by 2004 Iowa Acts, Senate File 2179, section 8, or this rule.

This rule is intended to implement Iowa Code section 68B.6 as amended by 2004 Iowa Acts, Senate File 2179, section 8.

351—6.15 Reserved.

DIVISION V GIFTS AND OFFERS

351—6.16 to 6.18 Reserved.

351—6.19(68B) Prohibition on receipt of an honorarium. Pursuant to Iowa Code section 68B.23, an official or employee shall not accept an honorarium from a restricted donor.

6.19(1) Definitions. For purposes of this rule, the following definitions apply:

“*Honorarium*” means a payment of compensation or the giving of anything of value to an official or employee in relation to a speaking engagement.

“*Restricted donor*” means a person as defined in Iowa Code section 68B.2(24).

6.19(2) Exceptions. An official or employee may receive and accept an honorarium provided that the honorarium consists of:

a. Payment of actual expenses for registration, food, beverages, travel, or lodging paid in return for participation on a panel or for a speaking engagement at a meeting. The expenses shall relate directly to the day or days on which the official or employee has participation or speaking responsibilities.

b. Receipt of a nonmonetary item or a series of nonmonetary items that the official or employee donates within 30 days of receipt to any of the following:

(1) A public body;

(2) A bona fide educational or charitable organization; or

(3) The department of administrative services. Items donated to the department of administrative services shall be disposed of by assignment to state agencies for official use or by public sale.

c. Payment to an official or employee for services rendered as part of a bona fide private business, trade, or profession in which the official or employee is engaged so long as both of the following conditions are met:

(1) The payment is commensurate with the actual services rendered; and

(2) The payment is being made due to a special expertise or other qualification the recipient possesses separate from the recipient’s status as a public official or public employee.

6.19(3) Solicitation prohibited. An official or employee shall not solicit, demand, or otherwise request an honorarium from a restricted donor.

This rule is intended to implement Iowa Code sections 68B.23 and 68B.32A(12).

351—6.20(68B) Loans from executive branch lobbyists prohibited. Pursuant to Iowa Code section 68B.24, officials, employees, and candidates for statewide office shall not directly or indirectly seek or accept a loan from a person who is an executive branch lobbyist.

6.20(1) Definitions. For purposes of this rule, the following definitions apply:

“*Executive branch lobbyist*” means an individual who is registered as a lobbyist with the board or is an “executive branch lobbyist” as defined in rule 351—8.2(68B).

“*Loan*” means a sum of money upon agreement, express or implied, to be repaid with or without interest.

6.20(2) Offer of loan prohibited. An executive branch lobbyist shall not directly or indirectly offer or make a loan to an official, an employee, or a candidate for statewide office as prohibited in Iowa Code section 68B.24(2) and rule 351—8.16(68B).

6.20(3) Exceptions. The prohibitions in Iowa Code section 68B.24 and this rule do not apply to a loan made in either of the following circumstances:

a. A loan made in the ordinary course of business. For purposes of Iowa Code section 68B.24 and this rule, “ordinary course of business” means the loan is made by a person regularly engaged in a business that makes loans to members of the public, and the finance charges and other terms of the loan are the same as or substantially similar to the finance charges and loan terms that are available to members of the public.

b. A loan made to the campaign committee of a candidate for statewide office that is subject to the campaign laws in Iowa Code chapter 68A.

This rule is intended to implement Iowa Code sections 68B.24 and 68B.32A(12).

[Filed 8/26/04, Notice 7/21/04—published 9/15/04, effective 10/20/04]

[Filed 1/28/05, Notice 11/10/04—published 2/16/05, effective 3/23/05]

[Filed 3/11/05, Notice 12/22/04—published 3/30/05, effective 5/4/05]

[Filed 5/23/05, Notice 3/16/05—published 6/22/05, effective 7/27/05]

[Filed without Notice 5/24/05—published 6/22/05, effective 7/27/05]

[Filed 2/8/06, Notice 12/21/05—published 3/1/06, effective 4/5/06]